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BEFORE THE

JOINT APPLICATION OF ELECTRIC §
TRANSMISSION TEXAS, LLC AND §
SHARYLAND UTILITIES, L.P. TO §
AMEND THEIR CERTIFICATES OF §
CONVENIENCE AND NECESSITY §
FOR THE NORTH EDINBURG TO §
LOMA ALTA DOUBLE-CIRCUIT 345- §
KV TRANSMISSION LINE IN §
HIDALGO AND CAMERON §
COUNTIES, TEXAS §

STATE OFFICE OF

ADMINISTRATIVE HEARINGS

CITY OF McALLEN'S INITIAL POST-HEARING BRIEF

COMES NOW, the City of McAllen ("City" or "McAllen") and submits this Initial Post-Hearing Brief with respect to *Joint Application of Electric Transmission, Texas, LLC and Sharyland Utilities, L.P. to Amend Their Certificates of Convenience and Necessity for the North Edinburg to Loma Alta Double-Circuit 345-KV Transmission Line in Hidalgo and Cameron Counties, Texas*, PUC Docket No. 41606. McAllen would first note that it is one of the Agreed Parties joining into the Agreed Parties' brief also filed in this docket. McAllen adopts the arguments put forth in the Agreed Parties' brief. However, in order to expand upon McAllen's case in chief in more detail, McAllen also submits this individual brief.

McAllen endorses the approval of the Agreed Route (a modified version of Route 3S) for construction of the proposed transmission line in this proceeding. McAllen would respectfully show as follows:

EXECUTIVE SUMMARY

- The Agreed Route should be approved for construction.
- The Joint Applicants' Recommended Route 32 should be rejected.
- Route 32 uses Link 118a, which poses substantial engineering constraints that could delay this project and greatly increase its cost.
- The McAllen-Miller International Airport's ("MFE") proximity to Link 118a provides substantial engineering and cost constraints associated with that link.

- The City of McAllen plans to expand MFE by extending the existing main runway, as well as constructing a new runway parallel to the extended main runway.¹
- The extension of the existing main runway, as well as the construction of a new runway, has received approval from the Federal Aviation Administration (“FAA”) through approval of MFE’s Airport Layout Plan.²
- MFE’s FAA-approved airspace is approved to include the extension of the existing runway and the construction of the new runway. Even though the expansions have not yet been built, they are included in the FAA “protected” airspace.³
- Mr. Beard testified that based on his three decades’ worth of experience at the FAA, the FAA will likely not grant a favorable determination for Link 118a’s construction unless the companies can build the structures no higher than 95 feet tall.⁴
- Joint Applicants’ witness Thomas admitted that he does not have any reason or even the requisite experience to question the findings of McAllen witness Mr. Beard.⁵
- Mr. Thomas also testified that it may not be possible to get the transmission line towers down to 95 feet tall along the entirety of link 118a.⁶
- Engineering expert Tom Sweatman testified that “[t]he FAA will likely require either a reduction in tower height, line relocation, or some other action. If this happens, it is likely to cause changes in design, added costs and delays in construction and initial operation of this line which has been determined to be critical.”⁷
- Route 32 contains Link 118a and should not be selected for this reason. Any other routes containing Link 118a should similarly not be selected.
- The Agreed Route does not use Link 118a and avoids any issues associated with the McAllen-Miller International Airport.

¹ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 6; Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 7-8; Direct Testimony of Bob McCreery, McAllen Ex. 3 at 5.

² Direct Testimony of Bruce Beard, McAllen Ex. 1 at 6 and Attachment A.

³ *Id.* at 5-6.

⁴ *Id.* at 9-12 and Attachment D.

⁵ Rebuttal Testimony of Barrett Thomas, Joint Applicants’ Ex. 10 at 6; Tr. at 142 (Dec. 4, 2013).

⁶ Rebuttal Testimony of Barrett Thomas, Joint Applicants’ Ex. 10 at 7.

⁷ Direct Testimony of Tom Sweatman, McAllen Ex. 5 at 10.

1) Link 118a Poses Engineering Constraints that Will Delay Construction and Initial Operation of the Line and Will Add Cost to the Project if Route 32 is Selected for Construction

a) Background on the Airport

The McAllen-Miller International Airport is a city-owned, public airport located just south of McAllen.⁸ MFE is the only public airport in the greater McAllen metropolitan area. The citizens of Mission, Pharr, La Joya, Palmhurst, Edinburg, San Juan, Alamo, Donna, and Weslaco, in addition to McAllen, rely upon MFE as their primary airport.⁹ The airport provides commercial, cargo, military, and private air service.¹⁰

Due to the booming population growth and economic growth in the area, especially due to foreign trade, McAllen is expanding MFE's facilities.¹¹ McAllen has formally approved plans to expand MFE's facilities. The terminal at MFE is currently being renovated.¹² Additionally, and importantly for this case, the runway facilities will be expanded. MFE currently boasts two runways: runway 13/31 and runway 18/36.¹³ The primary runway (13/31) will be lengthened to a total length of 10,000 feet¹⁴ and a new runway 6,000 feet long will be constructed parallel to the primary runway.¹⁵ The expansions will allow MFE a greater share of Border Texas air cargo and will allow MFE to compete with other airports such as Laredo and Harlingen.¹⁶ McAllen

⁸ Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 5.

⁹ *Id.*

¹⁰ *Id.* at 5-6.

¹¹ *Id.* at 7-8 and Attachment B.

¹² *Id.* at 7.

¹³ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 6.

¹⁴ *Id.* See also, Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 7; Direct Testimony of Bob McCreery, McAllen Ex. 3 at 5.

¹⁵ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 6; Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 7; Direct Testimony of Bob McCreery, McAllen Ex. 3 at 5.

¹⁶ Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 7.

has begun acquiring property necessary to lengthen the main runway and to construct the new runway.¹⁷

b) The FAA Will Require Notice of Any Construction Along Link 118a

It is undisputed that construction of Link 118a will require FAA notification. Mr. Bruce Beard gave testimony on behalf of the City of McAllen in this proceeding. Mr. Beard spent three decades with the FAA, specifically performing analysis as to whether proposed obstacles (such as transmission line towers) were too tall for applicable airspace.¹⁸ Mr. Beard explained that if an airport wishes to construct new facilities (such as a runway), they will draft up an Airport Layout Plan (“ALP”) for approval by the FAA.¹⁹

Mr. Beard examined MFE’s ALP on file with the FAA (which includes the extension of the primary runway and the construction of a new runway parallel to the primary runway).²⁰ Based upon this, Mr. Beard concluded that under Title 14 of the Code of Federal Regulations § 77.9, the proposed average tower heights for average towers will exceed an imaginary surface extending outward and upward of the 100 to 1 slope for a horizontal distance of 20,000 feet from the nearest point of the nearest runway for MFE.²¹ In short, Mr. Beard determined that the towers will exceed the slope and Joint Applicants will have to provide notice of construction along Link 118a to the FAA.²² He also testified that because the FAA normally requests notice when construction will be within the instrument approach area, and that will be true in this case

¹⁷ *Id.* at 8 and Attachment E.

¹⁸ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 3. Mr. Beard is also an instrument rated pilot. *Id.* at 3-4.

¹⁹ *Id.* at 5.

²⁰ *Id.* at 6 and Attachment A.

²¹ *Id.* at 9.

²² *Id.*

for all of Link 118a, there can be no doubt that notice to the FAA of proposed construction along Link 118a will be necessary.²³

c) The FAA Will Not Grant a Favorable Determination for Construction Along Link 118a As Currently Proposed

Mr. Beard determined that as proposed, the FAA will not grant a favorable determination for the construction of Link 118a because the proposed towers are simply too high—in places, as much as 50 feet too high.²⁴

Mr. Beard testified that once the FAA grants approval of the ALP, the FAA has essentially approved the corresponding airspace for that ALP. If the ALP requires a change to the airspace, the FAA must protect that airspace:

Q. PLEASE EXPLAIN WHAT YOU MEAN BY “PROTECT” THE AIRSPACE?

A. Airport runways are surrounded by what is referred to as protected airspace...Protected means that the FAA will not grant a favorable determination for any structure to be built that would penetrate this protected airspace causing a significant adverse effect to the aeronautical operations at the airport. *This is true even if the approved airspace was developed for facilities that are not yet built.*²⁵ (emphasis added)

MFE has received FAA approval for its ALP, and that ALP includes the primary runway expansion and the construction of the parallel runway.²⁶ These facilities, though not yet built, are included in MFE’s airspace *today* and as Mr. Beard explained, the FAA has to protect the airspace corresponding to those facilities.²⁷

²³ *Id.*

²⁴ *See Id.* at 9 and Attachment D.

²⁵ *Id.* at 5.

²⁶ *Id.* at 6.

²⁷ *Id.* at 5-6.

Mr. Beard performed the analysis that the FAA typically performs to determine whether a proposed obstacle would be too high and interfere with the airspace of an airport.²⁸ Mr. Beard determined that construction along Link 118a using average-sized towers would raise the decision altitude of certain crucial instrument approach procedures (“IAPs”).²⁹ Instrument approach procedures are “predetermined maneuvers for an aircraft under certain meteorological conditions (i.e., bad weather) from the beginning of the initial approach to a landing or to a point from which a visual landing may be made.”³⁰ The importance of IAPs is that “[t]he FAA has a policy against approving any construction that increases the decision altitude to any instrument approaches.”³¹ Decision altitudes are crucial for the safe landing of airplanes.³² If, at the decision altitude, a pilot does not see the runway environment, the pilot has to power up, pull up and attempt to land again.³³ If that fails, the pilot may have to turn the plane to another airport.³⁴

Construction along Link 118a will indeed impermissibly raise the decision altitude for several crucial IAPs.³⁵ Mr. Beard found construction on Link 118a would impermissibly raise IAPs for instrument landing systems (“ILS”), RNAV, LNAV/VNAV and LNAV.³⁶ He also explained the increases are both substantial and non-negotiable.³⁷ Mr. Beard specifically testified that: “I do not believe the FAA will grant a favorable determination for its [Link 118a’s]

²⁸ *Id.* at 7.

²⁹ *Id.* at 11.

³⁰ *Id.* at 7.

³¹ *Id.* at 11.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 9 and 11.

³⁶ *Id.*

³⁷ *Id.* at 11-12.

construction using average sized 145-foot tall towers.”³⁸ Indeed, Mr. Beard’s analysis concluded that portions of Link 118a could only be constructed using 95-foot structures, not 145-foot structures.³⁹

This analysis indicates that considerable design changes will be necessary in order to get the FAA to sign off on the construction of Link 118a. Mr. Beard explained what happens if the FAA determines that the construction will have a significant adverse effect to the operations of the airport:

[T]he FAA will go back to the construction sponsor [in this case, Joint Applicants] explaining what the impacts will be and offer alternatives that would not impact the aeronautical operations at the airport. In this case, such alternatives would be to lower the support structures in height, move the support structures to a location further from the airport, or to bury the line.⁴⁰

Indeed, electrical engineer Tom Sweatman (the Former PUC Director of Engineering) testified that the FAA process is likely to delay and add cost to the construction of Link 118a. “The FAA will likely require either a reduction in tower height, line relocation, or some other action. If this happens, it is likely to cause changes in design, added costs and delays in construction and initial operation of this line which has been determined to be critical.”⁴¹ Joint Applicants’ testimony indicates that the Joint Applicants may not be able to get the towers down to 95 feet in certain places along Link 118a.⁴²

³⁸ *Id.* at 12.

³⁹ *Id.* at 9 and Attachment D.

⁴⁰ *Id.* at 10.

⁴¹ Direct Testimony of Tom Sweatman, McAllen Ex. 5 at 10.

⁴² Rebuttal Testimony of Barrett Thomas, Joint Applicants’ Ex. 10 at 7.

Finally, McAllen presented evidence that the new runway will likely be even longer (by 2,000 feet) than currently approved by the FAA.⁴³ The import of this is that if the new runway is even longer, “Link 118a would make it impossible for any IAP of any kind to be developed for the proposed runway. In simpler terms, Link 118a will be a huge safety concern for the runway and the FAA will likely not grant a favorable determination for Link 118a’s construction.”⁴⁴ Due to the difficulties in procuring FAA approval, Mr. Beard and Mr. Sweatman recommended that routes using Link 118a should not be selected for construction in this proceeding.⁴⁵

Joint Applicants have not presented any evidence of how they plan to comply with the FAA’s requirements if Link 118a is constructed. Instead, Joint Applicants prefer to bury their heads in the sand with arguments that the airport runway expansions are speculative. These arguments reflect that Joint Applicants simply do not understand the FAA hazard determination process. Mr. Beard’s uncontroverted testimony is that it does not matter whether the new facilities are built, or indeed, whether they ever get built. So long as the airspace is designed for the runway facility expansions, the FAA will protect the airspace associated with the runway facility expansions. Mr. Beard definitively testified that Link 118a will not receive a favorable hazard determination from the FAA. Therefore, use of Link 118a, such as in Route 32, is sure to result in delays and increased costs due to engineering redesigns that will be necessary to receive a favorable determination from the FAA. Route 32 and all other routes using Link 118a should be rejected. The Agreed Route avoids any issues with the airport and should be selected for construction in this proceeding.

⁴³ Direct Testimony of Bruce Beard, McAllen Ex. 1 at 13.

⁴⁴ *Id.*

⁴⁵ *Id.* See also, Direct Testimony of Tom Sweatman, McAllen Ex. 5 at 10.

2) Link 118a Will Cause Safety and Operational Impacts to the Airport If Constructed

Route 32 should be rejected because construction along Link 118a will cause safety and operational delays at the McAllen-Miller International Airport. As briefed above, McAllen is certain that the FAA will not grant a favorable determination for construction along Link 118a. Assuming *arguendo* that the Joint Applicants build Link 118a as proposed (over FAA objections), the airport's operations will be restricted due to safety concerns.

Mr. Stanton, the owner and founder of Western Flyers, testified that if Link 118a is constructed as proposed, it would cause substantial delays and even cancelled flights.⁴⁶ "If Link 118a is constructed along the proposed alignment, the FAA will 'increase weather minimums' for certain instrument approaches for runway 31L."⁴⁷ Mr. Stanton, based on his 30 years of expertise as a pilot, explained the importance of weather minimums as they relate to instrument approaches. Mr. Stanton testified that:

Instrument approaches are carefully designed routes for aircraft to follow when weather conditions do not allow enough visibility to land. As weather conditions deteriorate, either ceiling or visibility, all aircraft must follow prescribed instrument procedures to land. The lower the weather, the more precise approach required....

The IAPs all include 'weather minimums.' This means that as long as the weather is equal to or better than these limits, aircraft can land, using that instrument approach. If the weather at the airport is lower than the allowed minimums, the aircraft cannot use that approach procedure.⁴⁸

Weather minimums are not discretionary—pilots may not disregard them.⁴⁹ Mr. Stanton further explained that if an object such as a transmission tower extends up into the safety zone of an aircraft's potential approach to an airport, the weather minimums for that approach will be

⁴⁶ Direct Testimony of Thomas Michael Stanton, McAllen Ex. 4 at 10.

⁴⁷ *Id.* at 5.

⁴⁸ *Id.* at 6-7.

⁴⁹ *Id.* at 7.

raised in order to reestablish the required safety zone.⁵⁰ If Link 118a is constructed as proposed by Joint Applicants, the FAA will increase the weather minimums for certain instrument approaches for runway 31L.⁵¹ The practical effect of raising weather minimums is to decrease the operations of the airport:

[T]he only options available if the weather does not lift up above the weather minimums are: a) delay departure to MFE until the weather improves, b) return to their point of departure (DFW for American or IAH for Continental), or c) divert to another airport for smaller operators. For certified air carriers such as Western Flyers, American Airlines, and Continental Airlines, if the weather at your destination is below the landing minimums, you are not permitted to depart for that destination.⁵²

Mr. Stanton also testified that instrument approaches are often necessary at MFE, due to the typical recurrence of fog in the area.⁵³ Mr. Stanton estimated that approximately 48 days (or 13%) from November 1, 2012 through October 31, 2013 required an instrument approach at MFE due to rain, and those figures exclude any fog occurrences.⁵⁴

Mr. Stanton also explained that for cargo operators, obstacles such as transmission towers can be a big problem. The finances of the operators require them to carry as much as they can as far as possible.⁵⁵ However, should an obstacle extend into the departure safety zone of an airport, a departing aircraft must depart at an increased rate. For large aircraft, the only way this may be achieved is through lowering the weight of the aircraft through fewer passengers, less cargo, or less fuel.⁵⁶ Cargo operators are also especially likely to be impacted by reduced

⁵⁰ *Id.* at 7.

⁵¹ *Id.* at 5.

⁵² *Id.* at 8.

⁵³ *Id.* at 9.

⁵⁴ *Id.* at 9 and Attachment A.

⁵⁵ *Id.* at 9.

⁵⁶ *Id.* at 8.

weather minimums. Cargo flights “take off and land at odd hours of the day, when weather is much more likely to be bad, and it is more likely that instrument approaches would be needed.”⁵⁷ For cargo operators at MFE, such as UPS, this would clearly affect their bottom line and make MFE a much less appealing place to do business. In fact, Mr. Stanton opined that “I would expect that any changes to instrument approaches would substantially negatively impact UPS’ operations at MFE and possibly even cause United Parcel Service (“UPS”) to move to another airport.”⁵⁸

Construction along Link 118a will restrict the expansion and operations of MFE, especially its new cargo operations. It will also reduce the amount of time that MFE is open for departing and arriving flights—costing travelers and businesspeople valuable time—and will result in lost revenues for both the City of McAllen and the greater McAllen metropolitan area. Link 118a (including any routes that use Link 118a, such as Route 32), should be rejected. The Agreed Route will not impact the airport and should be selected for construction in this proceeding.

3) Community Values Favor Selection of the Agreed Route

MFE is crucial to the McAllen metropolitan area and the surrounding community.⁵⁹ “The airport is ideally located in the transportation center of the lower Rio Grande Valley, with easy access to transportation corridors such as U.S. Highways 281 and 77, traversing north-south, and U.S. Highway 83, a six-lane highway traversing east-west.”⁶⁰ The airport handles approximately

⁵⁷ *Id.* at 10.

⁵⁸ *Id.*

⁵⁹ McAllen intervened in this proceeding solely to protect the airport. Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 4 and Attachment A.

⁶⁰ Direct Testimony of Mayor Jim Darling, McAllen Ex. 2 at 5.

20 commercial flights daily.⁶¹ As explained above, many communities within the McAllen metropolitan area rely upon the airport as their primary airport.⁶²

The airport is also a critical international trading hub due to its close proximity to Mexico.⁶³ MFE's air cargo facility is located within a Foreign Trade Zone, where certain types of merchandise may be imported without going through formal U.S. Customs entry procedures or paying import duties.⁶⁴ The airport fuels the Texas economy because Mexican citizens frequently fly into the US at MFE and eat and shop as tourists in Texas.⁶⁵ The airport also supports military operations, mainly transient pilot training operations.⁶⁶

MFE is crucial to the local economy of the McAllen metropolitan area, generating over \$250 million in economic activity, near \$104 million in salary, wages, and benefits, and provides over 3,500 jobs.⁶⁷ Mayor Darling testified: "[i]f McAllen-Miller International Airport were to close outright, the region would essentially be stranded and the loss of jobs would become a huge burden on the local economy and place a burden on the larger Texas economy."⁶⁸ The airport is also beneficial to the larger Texas economy as a transportation center of cargo. UPS began a new daily cargo flight to MFE in 2012, connecting shippers in the Rio Grande Valley with customers all over the world.⁶⁹ Therefore, MFE's continued operation and expansion is of

⁶¹ Direct Testimony of Bob McCreery, McAllen Ex. 3 at 4-5.

⁶² Direct Testimony of Major Jim Darling, McAllen Ex. 2 at 5.

⁶³ *Id.* at 5-6.

⁶⁴ *Id.*

⁶⁵ *Id.* at 6.

⁶⁶ *Id.*

⁶⁷ *Id.* at 6 and Attachment C.

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 6. *See also*, Direct Testimony of Bob McCreery, McAllen Ex. 3 at 5.

great importance not just to McAllen, but to the surrounding community, and even to the State of Texas.

McAllen presented testimony from members of the community as to the importance of MFE to them personally. Bob McCreery, owner of McCreery Aviation Co., Inc., only testified in order to support the airport due to its great personal importance to him and to his employees. McCreery Aviation is the fixed base operator for MFE.⁷⁰ Mr. McCreery testified that he relies upon that business to support his family.⁷¹ He also testified that he employs 45 employees that also rely on the airport as the means for their livelihoods and to support their families.⁷²

Mike Stanton also testified that MFE is important to him personally. Mr. Stanton is the founder of Western Flyers Air Service.⁷³ Western Flyers is a private air carrier that provides transportation, passengers, freight, and air ambulance to Texas, neighboring states, Mexico, and Central America.⁷⁴ Mr. Stanton testified that “[t]he airport is very important to our livelihood. We built this business over a period of twenty plus years. The company was founded with one single engine aircraft and one pilot—me. We now own three planes and provide jet powered, air conditioned, and pressurized transportation to our customers. Western Flyers Service employs four individuals, other than me, and we all depend on this business for our livelihoods.”⁷⁵ Additionally, the Aircraft Owners and Pilots Association (“AOPA”) has weighed in against the use of Link 118a.⁷⁶

⁷⁰ Direct Testimony of Bob McCreery, McAllen Ex. 3 at 4.

⁷¹ *Id.* at 5.

⁷² *Id.* and Attachment A.

⁷³ Direct Testimony of Thomas Michael Stanton, McAllen Ex. 4 at 3.

⁷⁴ *Id.* at 4.

⁷⁵ *Id.* at 5.

⁷⁶ *Id.* at Attachment B.

As briefed above, construction along Link 118a as proposed would create operational constraints for the airport. Mr. Stanton put it best when he said:

There is no reason to restrict the expansion of MFE by building a transmission line so close to the airport. MFE is a crucial hub for the area that creates many jobs. It is my recommendation that the transmission line be constructed on a link other than Link 118a.⁷⁷

Link 118a should not be constructed. As Link 118a is included in Route 32, Route 32 should be rejected. The Agreed Route does not use Link 118a. The Agreed Route should be selected for construction in this proceeding.

CONCLUSION

As briefed in the Agreed Parties' brief and in the City of McAllen's brief above, the Agreed Route is the best route for construction of the proposed North Edinburg to Loma Alta transmission line. Route 32 should be rejected because it contains Link 118a. As demonstrated above, Link 118a poses engineering constraints due to FAA requirements that will increase the project's costs and delay the project for engineering redesigns. Link 118a will also pose safety and operational constraints that will have a negative impact on the McAllen-Miller International Airport. This will result in reduced commerce and trade in South Texas. The community has spoken in support of a route that does not negatively impact MFE. The Agreed Route is the only logical choice for construction of the proposed North Edinburg to Loma Alta transmission line.

McAllen respectfully requests the administrative law judge ("ALJ") and ultimately the Commission, select the Agreed Route for construction of the proposed North Edinburg to Loma Alta transmission line. In the alternative, McAllen respectfully requests the ALJ select a route that does not use Link 118a. The City of McAllen further requests any and all other relief to which it is duly entitled.

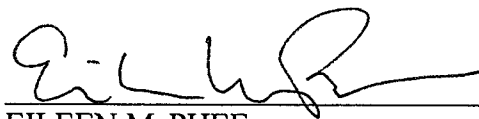
⁷⁷ *Id.* at 10.

Respectfully submitted,

**LLOYD GOSSELINK ROCHELLE
& TOWNSEND, P.C.**

816 Congress Avenue, Suite 1900
Austin, Texas 78701
(512) 322-5800
(512) 472-0532 (Fax)
ggay@lglawfirm.com
emcphee@lglawfirm.com

GEOFFREY M. GAY
State Bar No. 07774300



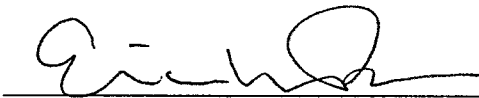
EILEEN McPHEE

State Bar No. 24060273

ATTORNEYS FOR THE CITY OF McALLEN

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2013, a true and correct copy of the foregoing document was served in accordance with SOAH Order No. 4.



EILEEN L. McPHEE